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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Implementation of the Non-Accounting) CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended)

COMMENTS OF
FOCAL COMMUNICATIONS CORPORATION

Focal Communications Corporation ("Focal"), by undersigned counsel, submits these comments in response to the Commission's Public Notice in this proceeding.¹ The Commission was correct in the *Non-Accounting Safeguards Order* to conclude that the Section 271 prohibition applied to BOC provision of interLATA information services as well as interLATA telecommunications services.² As the Commission reasoned, it is reasonable to conclude that Congress intended to prohibit BOCs from providing all interLATA services until such time as competition had taken firm root in local exchange markets, as determined by the Commission.³

In response to the first question identified for comment in the Public Notice, Focal submits that when information services are provided "via telecommunications" as that term is used in the definition of information services, telecommunications necessarily are a component of information services. That does not mean, however, that providers of information service are

¹ *Comments Requested in Connection with Court Remand of Non-Accounting Safeguards Order*, Public Notice, CC Docket No. 96-149 (rel. Nov. 8, 2000) ("Public Notice").

² *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Dkt. No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*") at ¶¶ 55-56.

³ *Id.*

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also providers of telecommunications.⁴ Information services are “mutually exclusive” from telecommunications services.⁵

Qwest now asserts that if information services are mutually exclusive from telecommunications services, and ISPs do not “provide” telecommunications services, it is not prohibited by Section 271 from providing interLATA information services.⁶ It is initially difficult to see what difference that position makes over what Qwest is already providing. Qwest and the other BOCs already have the ability to provide Internet access services, thereby making interLATA information services available to end users.⁷ This point was addressed in the U S West/Qwest merger proceeding. In that case, Qwest agreed to divest its in-region interLATA transmission facilities to Touch America.⁸ Qwest, however, maintained a contractual relationship with Touch America for Touch America to provide interLATA telecommunications in connection with Qwest’s dedicated ISP service provided to end users located in-region.⁹ Qwest retained its contractual relationship with Concentric Network Corporation to provide interLATA telecommunications for Qwest’s dial-up ISP service. Both Touch America and Concentric serve as “Global Service Providers” to Qwest so that Qwest may provide ISP service to end users in-region. Focal submits that Qwest already provides a service that has all the

⁴ Focal recognizes that the situation may be different when an ISP provides its own telecommunications functionality.

⁵ *Federal-State Joint Board on Universal Service*, CC Dkt No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998).

⁶ Public Notice at 2.

⁷ See *Non-Accounting Safeguards Order* at ¶ 120; *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706, or, in the Alternative, a LATA Boundary Modification*, 15 FCC Rcd 3089, n.81 (Feb. 11, 2000). Of course, the fact that BOCs may now provide Internet access through Global Service Provider arrangements indicates that information services are severable from telecommunications services at the ISP. Because information services are severable from telecommunications services, local calls to ISPs are also severable from subsequent Internet transmissions.

⁸ *Qwest Communications International, Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 11909, 11928 (June 26, 2000).

appearances of in-region interLATA information services through its Global Service Provider arrangements with Touch America and Concentric.¹⁰

Qwest's argument therefore suggests that what it now seeks is to be freed to provide the telecommunications component that Touch America and Concentric currently provide as Global Service Providers. Obviously, providing in-region interLATA telecommunications to its own ISP operation would be prohibited by Section 271. As the Commission has already explained, "regardless of whether we interpret 'interLATA service' to include interLATA information services, a BOC would be required to obtain section 271 authorization prior to providing, in-region, the interLATA telecommunications transmission component of an interLATA information service."¹¹ If Qwest wishes to provide any in-region interLATA telecommunications, whether as a component for an information service or as POTS long distance service, it must first satisfy the elements in the competitive checklist of Section 271.

Further, if the Commission rules in response to the its first identified issue that telecommunications are a bundled component of information service, it must reaffirm its conclusion in the *Non-Accounting Safeguards Order* that "[Internet service providers] do not use exchange access as it is defined by the Act."¹² While Focal is aware that the Commission claims to have overruled certain findings from the *Non-Accounting Safeguards Order* in its *Order on*

⁹ *Id.*

¹⁰ Other BOCs have similar arrangements with Global Service Providers. According to Verizon, "with Verizon Online, you get a choice of Global Service Providers, and the GSP pass-through charges are distinguished from our service charges." <http://www.bellatlantic.net/help/faqs/#faqgsp>. In BellSouth territory, "Pricing plans include BellSouth's charges for connection to its local Internet network and the Global Service Provider's (GSP) charges for connection to the global Internet. GSP service is provided to users by provider(s) unaffiliated with BellSouth, and subject to the GSP's terms and conditions." <http://services.bellsouth.net/external/service/pricing/index.html#monthly>. See also, <http://promo.prodigy.com/sbc/ameritech/>, identifying GSP charges as included in basic subscription rates.

¹¹ *Id.* at ¶ 57.

¹² *Non-Accounting Safeguards Order* at ¶ 248.

Remand in the Advanced Services docket,¹³ the Commission, in fact, has not. The finding that the Commission claims to have overruled does not even appear in the *Non-Accounting Safeguards Order*. The holding from the *Non-Accounting Safeguards Order*, that ISPs do not use exchange access, remains unchanged.¹⁴ The statement in the *Non-Accounting Safeguards Order* that ISPs do not use exchange access is also consistent with the FCC's *Local Competition Order*.¹⁵ The *Local Competition Order* merely recognized that non-carriers on occasion "purchase" exchange access.¹⁶

The Commission's conclusion that ISPs do not use exchange access as it is defined in the Act was sound. The Commission stated correctly that exchange access is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."¹⁷ Because the Commission determined that "telephone toll service" is a "telecommunications service,"¹⁸ the conclusion that ISPs do not use exchange access as it is defined in the Act was clearly correct.

Again, it is reasonable to conclude that Congress intended to prohibit a BOC from providing any interLATA services until it has opened its local markets to irreversible competition. Therefore, the Commission should rule that the Section 271 prohibition on BOC provision of interLATA services applies to interLATA information services as well as to interLATA telecommunications services. To the extent Qwest seeks to provide the Global

¹³ *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt Nos. 98-147 et al., Order on Remand, FCC 99-413 (rel. Dec. 23, 1999).

¹⁴ See also Brief of Petitioner WorldCom, Inc. and Supporting Intervenors, *WorldCom, Inc. v. FCC*, Nos. 00-1002 et al., (D.C. Cir.). Focal is an intervenor in the case and joined WorldCom in its brief.

¹⁵ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

¹⁶ *Local Competition Order* at ¶ 873.

¹⁷ *Non-Accounting Safeguards Order*, ¶ 248, quoting 47 U.S.C. § 153(16).

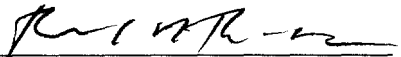
¹⁸ *Id.*

Service Provider telecommunications component of the ISP service it provides to end users, that service is clearly prohibited by Section 271 without Commission approval.

Respectfully submitted,

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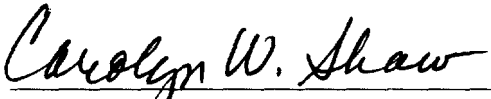
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I, Carolyn W. Shaw, do hereby certify that on this 29th day of November, 2000 the foregoing Comments of Focal Communications Corporation were delivered by hand to the following:


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